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ELIZABETH HINES, Tenant/Petitioner, v. BRAWNER COMPANY, INC., Housing Provider/Respondent.	Case No.: RH-TP-07-28930 *In re* 1280 21st Street NW, Unit 310

FINAL ORDER

The tenant petition here asserts claims that arose more than four years before the petition was filed. In response to my Order To Show Cause why this case should not be dismissed as time-barred under the Rental Housing Act's statute of limitations, D.C. Official Code § 42-3502.06(e), Tenant urges that I should invoke equitable powers to re-open a previous tenant petition that was dismissed in May 2005. I conclude that I do not have the power to give Tenant the relief that she seeks and therefore dismiss Tenant's claims as time-barred.

I. Procedural History

On March 27, 2007, Tenant/Petitioner Elizabeth S. Hines filed Tenant Petition ("TP") 28,930, complaining of violations of the Rental Housing Act of 1985 (the "Rental Housing Act" or the "Act") at her former Housing Accommodation, 1280 21st Street NW, Unit 310. The petition asserted that: "This petition is a continuation of TP 27,707, as ordered by the DCRA [Department of Consumer and Regulatory Affairs], Keith Anderson, Hearing Examiner, on

4/27/05 for relief from judgment." Housing Provider, Brawner Company, was named as the property manager against whom the petition was filed. The petition checked boxes asserting that: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act; (2) Housing Provider failed to file the proper rent increase forms with the RACD (the Rental Accommodations and Conversion Division of the DCRA); (3) the rent being charged exceeds the legally calculated rent ceiling for the unit; (4) a rent increase was taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; (5) the rent was increased while a written lease prohibiting such increases was in effect; (6) services and/or facilities provided in connection with the rental of the unit have been permanently eliminated; (7) services and/or facilities provided in connection with the rental of the unit had been substantially reduced; (8) services and facilities, as set forth in a voluntary agreement filed with and approved by the Rent Administrator under Section 215 of the Rental Housing Act, have not been provided as specified; (9) retaliatory action had been directed against Tenant by Housing Provider for exercising Tenant's rights in violation of Section 502 of the Rental Housing Act; (10) a notice to vacate had been served on Tenant in violation of Section 501 of the Rental Housing Act; and (11) the Housing Provider had violated other provisions of the Rental Housing Act that were not specified in the tenant petition.

The tenant petition asserted other allegations including eviction, garnished wages, attached bank accounts, loss of personal property, and bankruptcy. It attached a narrative and documents describing and relating to events that occurred between 1986 and December 2002.

A hearing on the tenant petition was originally scheduled in September 2007, but was continued and is no longer scheduled. On February 29, 2008, following a status conference, Tenant filed a motion to amend her tenant petition. The proposed amended petition adopted the

allegations of the previous tenant petition in their entirety, elaborated on some of the previous claims, and named Irene M. Linder, the owner of record of the Housing Accommodation, as an additional Housing Provider. Housing Provider opposed the amendment, urging, among other arguments, that the tenant petition should be dismissed because it asserted claims that were barred under the Rental Housing Act's three-year statute of limitations.

On March 24, 2008, I issued an Order directing Tenant to show cause why this case should not be dismissed because the claims asserted in the tenant petition are barred by the statute of limitations, D.C. Official Code § 42-3502.06(e). In the Order, I stated that Housing Provider could include a motion to dismiss or a motion for summary judgment in its opposition.

Tenant filed her answer to the Order To Show Cause ("Tenant's Answer") on April 7, 2008. The answer urged that: (1) "The March 24, 2003, Order dismissing TP 27,707 be vacated;" (2) "a scheduling Order be issued to permit Petitioner to conduct discovery;" and (3) "an evidentiary hearing be held on the merits." Tenant's Answer 1–2. In support of her motion Tenant argued that the RACD had mistakenly dismissed her previous petition, TP 27,707, rather than reinstating it, and that "the OAH has the equitable power to . . . correct RACD order." Tenant's Answer 14. The Answer was supported by an affidavit from Tenant and documents relating to the earlier proceedings.

Housing Provider responded to Tenant's Answer by filing a Motion To Dismiss. Housing Provider asserted that: (1) Tenant's claims are barred by the statute of limitations; (2) most of the claims are beyond OAH jurisdiction; and (3) Tenant cannot seek to revisit the

RACD's dismissal of her previous petition in 2005 because she did not file a timely appeal or motion for reconsideration at the time the order was issued.[1]

Based on the outstanding motions, filings, exhibits, affidavits, and the record as a whole, I make the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

Tenant initially leased her rental unit in January 1975. Tenant's Answer, Ex. 1. In 1986 Housing Provider informed the building tenants that the building was being converted to condominiums. The tenants were given the option to purchase their units or to remain as renters under the protection of rent control. Tenant's Answer, Ex. 2. Tenant did not purchase her unit and remained as a renter.

On July 18, 2001, Tenant filed her first tenant petition with the Rent Administrator, TP 27,225. Tenant alleged that Housing Provider had increased her rent illegally and reduced services and facilities. Tenant's attorney agreed to dismiss the tenant petition with prejudice on March 9, 2004. Tenant's Answer, Hines Aff. ¶¶ 3,4.

In July 2002 Housing Provider sold Tenant's apartment to Irene M. Linder, an attorney who had represented Housing Provider. Tenant was offered an opportunity to purchase the unit,

[1] On June 11, 2008, Tenant filed Tenant Petitioner's Opposition To Housing Provider's Motion To Dismiss and Supplemental Motion To Dismiss. The filing referred to a Supplemental Memorandum in Support of Motion To Dismiss, received by Tenant's counsel on May 29, 2008. Tenant's Opp. ¶ 13. OAH has no record of this filing, and Housing Provider's counsel has not returned a phone call from OAH requesting information about the document. Therefore, I have not been able to consider any arguments that Housing Provider may have raised. I have considered the arguments raised in Tenant's June 11 filing, notwithstanding that it is untimely insofar as it seeks to oppose Housing Provider's motion to dismiss, which was filed on April 23, 2008.

as required by District of Columbia law, but she did not exercise the option. Tenant's Answer, Ex. 3.

On July 30, 2002, the day she closed on the property, Ms. Linder sent Tenant a letter notifying her that Ms. Linder was the new owner, the property was exempt from rent control, and Tenant's rent would increase from $939 per month to $1,600 per month as of September 1, 2002. Tenant's Answer, Ex. 7. The following day, Ms. Linder filed a Registration/Claim of Exemption Form with the RACD for Tenant's rental unit. Tenant's Answer, Ex. 8.

Tenant apparently responded by refusing to pay her rent to Ms. Linder[2]. Ms. Linder filed a possessory action in the Landlord/Tenant Branch of the Superior Court of the District of Columbia. Tenant's Answer Ex. 9. On December 19, 2002, the Court issued a notice that Tenant would be evicted sometime between December 23, 2002, and March 3, 2003.

The record does not reflect precisely when Tenant was evicted, but in a letter filed with the RACD, Tenant stated that she had changed her mailing address on January 6, 2003.[3] Based on this representation, and the eviction notice, I find that as of February 2003 Tenant no longer occupied the rental unit in dispute here.

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[2] The tenant petition attaches a letter from Tenant to Mr. William Brawner enclosing rent checks for September and October 2002 in the amount of $939 each. The letter asserts that: "Since I have no assignment of a lease/no lease and the only existing lease I have is with the Brawner Company, you remain my landlord."

[3] Housing Provider's Opposition of Respondent to Petitioner's Motion To Amend, filed March 19, 2008, attaches Exceptions and Opposition of Respondent to the Proposed Order of the Administration Granting Petitioner's Motion for Reconsideration, filed in TP 27,707 on June 20, 2005. Exhibit B to this submission includes a letter from Tenant to Timothy Handy, Chief of Adjudication, dated March 25, 2003. The letter lists Tenant's address as "c/o The New York Times, 1627 I Street NW, #700, Washington, DC 20006," and states that: "The DCRA was informed that my mailing address had been changed at the post office on January 6, 2003, and all mail was being forwarded to me at my work address."

Following an appearance in the Landlord/Tenant Branch, which resulted in the notice of eviction, Tenant filed her second tenant petition, TP 27,707, with the RACD on December 23, 2002. The petition checked no boxes concerning rent increases, although it asserted that Ms. Linder "doubled my rent" following a "fraudulent transaction" of sale. The petition did check boxes asserting reduction and elimination of services and facilities, retaliation, and service of an illegal notice to vacate.

The RACD scheduled TP 27,707 for hearing on March 24, 2003. Several of the documents filed in that proceeding are attached as exhibits to Exceptions that Housing Provider filed in that case on June 20, 2005, ("Housing Provider's Exceptions), which, in turn, were attached to the Opposition of Respondent to Petitioner's Motion To Amend, filed in the present proceeding on March 19, 2008. See note 3, *supra*.

On March 23, 2003, the day before the hearing was scheduled, Tenant submitted an Emergency Motion for Continuance to the RACD, stating that her attorney had withdrawn at the last moment. Housing Provider's Exceptions, Ex. B. The motion was not served on Housing Provider, whose counsel had not yet entered an appearance. Tenant did not appear at the hearing. After she was informed by the Rent Administrator that her motion was untimely, she filed a Motion To Withdraw on the day of the hearing, March 24, 2003. The motion to withdraw asserted her intent to "re-file at another date in the near future." Tenant's Answer, Hines Aff. ¶ 12; Housing Provider's Exceptions, Ex. B.

Housing Provider's property manager appeared at the March 24 hearing with counsel and moved to dismiss the tenant petition for lack of prosecution and because the issues in the tenant petition had been purportedly adjudicated in eviction proceedings in the Landlord/Tenant

Branch. On April 4, 2003, the hearing examiner issued an order that denied Tenant's motion to withdraw and dismissed the tenant petition with prejudice. *See Hines v. Brawner Co.*, TP 27,707 (RHC Sept. 7, 2004) at 2-3.

Tenant appealed the hearing examiner's decision to the Rental Housing Commission. The Commission reversed the hearing examiner's decision, concluding that the decision in the Landlord/Tenant Branch was not *res judicata* as to the tenant petition that the hearing examiner had failed to make appropriate findings of fact and conclusions of law to justify a dismissal with prejudice. *Id.* at 11.

In a decision and order on remand of April 27, 2005, the hearing examiner again ordered the tenant petition dismissed with prejudice, dutifully supporting the decision with findings of fact and conclusions of law. Housing Provider's Exceptions, Ex. A at 4-5. Tenant filed a Motion for Reconsideration, asserting that she had been misinformed by the RACD office about the procedure for obtaining a continuance and the need for her to appear at the hearing. Housing Provider's Exceptions, Ex. B.

On May 31, 2005, Supervisory Hearing Examiner Keith Anderson issued an Order Granting Petitioner's Motion for Reconsideration on the grounds that "the Examiner erred in failing to determine that Petitioner Elizabeth Hines' request to withdraw TP 27,707 constituted good cause why she failed to appear at the hearing on March 25 [sic], 2003." The Order directed that the April 27, 2005, Decision and Order be "**CORRECTED AND AMENDED** by deleting the words "DISMISSED WITH PREJUDICE" and inserting the words "DISMISSED WITHOUT PREJUDICE." Order Granting Pet'r's Motion for Recons., TP 27,707 (DCRA

Hous. Regulation Admin., May 31, 2005) at 1 (the "May 31, 2005, Order"), attached to Notice of Order Granting Recons. of TP 27,707, filed Feb. 14, 2008.

Housing Provider filed Exceptions and Opposition to the Order. The Rent Administrator did not act on them.

Tenant filed the present tenant petition on March 27, 2007.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985 (the "Act"), D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings ("OAH") has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

B. The Standard for Summary Judgment

OAH Rule 2828 states "[m]otions for summary adjudication or comparable relief may be filed in accordance with Rule 2812." OAH Rule 2812 sets forth the procedures for filing motions, but does not speak specifically to motions for summary judgment. Under OAH Rule 2801.2, "Where a procedural issue coming before this administrative court is not specifically

addressed in these Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority."

Housing Provider's motion in this case is styled as the "Motion of Respondent To Dismiss." I will construe it to be a motion for summary judgment, though, because it asserts issues of fact, as set forth above in the Findings of Fact. *See* Super Ct. Civ. R. 12 (b) ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.").[4]

The summary judgment standard set forth in the Super Ct. Civ. R. 56(c) provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The District of Columbia Court of Appeals described the substantive standard for entry of summary judgment in *Behradrezaee v. Dashtara*, 910 A.2d 349, 364 (D.C. 2006):

> 'Summary judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. GLM P'ship v. Hartford Cas. Ins. Co., 753 A.2d 995, 997-998 (D.C. 2000) (citing Colbert v. Georgetown Univ., 641 A.2d 469, 472 (D.C. 1994) (en banc)). 'A motion for

[4] Tenant presented her assertions of fact and argument in her Answer to Order To Show Cause, filed April 7, 2008, and her Opposition to Housing Provider's Motion To Dismiss and to Supplemental Motion To Dismiss, filed June 11, 2008. These filings have "given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

> summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof.' Kendrick v. Fox Television, 659 A.2d 814, 818 (D.C. 1995) (quoting Nader v. de Toledano, 408 A.2d 31, 42 (D.C. 1979)).

Although the moving party has the burden of demonstrating the absence of a genuine issue of material fact, "[o]nce the movant has made such a prima facie showing, the nonmoving party has the burden of producing evidence that shows there is 'sufficient evidence supporting the claimed factual dispute . . . to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Kendrick v. Fox Television*, 659 A.2d 814, 818 (D.C. 1995) (quoting *Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979).

Applying this standard to the facts here, I conclude that there is no genuine issue of material fact to justify a hearing on the tenant petition. All of Tenant's complaints occurred before the Spring of 2003, four years before the present tenant petition was filed. These complaints are barred by the Rental Housing Act's statute of limitations, D.C. Official Code § 42-3502.06(e). I do not have the power to ignore the plain language of the Act or to revive Tenant's previous petition, which was dismissed more than three years ago and is not within the jurisdiction of this Administrative Court.

C. The Rental Housing Act Statute of Limitations

The starting point for analysis is the Rental Housing Act itself. The Act provides:

> A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except

> that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

D.C. Official Code § 42-3502.06(e) (emphasis added).

In turn, the Rental Housing Commission regulations provide that: "a tenant petition filed under this section shall be filed within three (3) years of the effective date of the adjustment." 14 DCMR 4214.8.

The language of the statute is unambiguous. "No petition may be filed with respect to any rent adjustment . . . more than 3 years after the effective date of the adjustment . . . ." In *Kennedy v. D.C. Rental Hous. Comm'n,* 709 A.2d 94 (D.C. 1998), the District of Columbia Court of Appeals affirmed the Rental Housing Commission's holding that the statute barred any challenge to a rent increase or rent level that arose more than three years before a petition was filed. The Court observed that: "In effect, the [Commission's] interpretation bars any investigation of the validity of rent levels, or of adjustments in either rent levels or rent ceilings, in place more than three years prior to the date of the filing of a tenant petition and thus treats them as unchallengeable." *Id.* at 97. The Commission's own decisions have consistently barred such challenges, including allegations of reduced services and facilities, irrespective of the equities of the claims themselves. *See, e.g.*, *Chin Kim v. Woodley*, TP 23,260 (RHC Sept. 13, 1994) at 2 (rent increase six years before tenant petition filed); *Williams v. Alvin L. Aubinoe, Inc.*, TP 22,821 (RHC Aug. 12, 1992) at 4 (rent increases four and five years before tenant petition filed); *Borger Mgmt., Inc. v. Warren*, TP 23,909 (RHC June 3, 1999) at 6 (services and facilities claims arising more than three years before tenant petition was filed).

Although the claims in the present tenant petition are substantially identical to those filed in TP 27,707, it is irrelevant that Tenant's previous tenant petition was filed within three years of the events that Tenant complains of. A dismissal without prejudice does not toll the statute of limitations. *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 237 (D.C. 2006); *Ciralsky v. CIA,* 355 F.3d 661, 672 (D.C. Cir. 2004). Thus, when Tenant's petition was dismissed without prejudice, Tenant was free to re-file her petition and to renew her claims. But the three year statute of limitations period was linked to the date that she filed the new petition, not the date of her prior petition.

In her answer to the Order To Show Cause, Tenant does not attempt to distinguish *Kennedy* or other precedent concerning the Rental Housing Act's statute of limitations. Instead, she presents two lines of argument in support of preserving her claims. First, Tenant asserts that "the RACD never ruled on Petitioner's Motion To Withdraw," and "failed to vacate the Dismissal Without Prejudice as mandated by D.C. Superior Court Rules and case law." Tenant's Answer 8, 9. Consequently, Tenant submits that she has demonstrated "good cause why the March 23, 2003, dismissal should be vacated." Tenant's Answer 14. Second, Tenant urges that "[t]he OAH has equitable power to supplement, and/or correct RACD Order to conform with the clear intent and as required for the sound administration of justice." *Id.*[5] Neither of these arguments is persuasive.

[5] Tenant also argues, in response to Housing Provider's opposition to her motion to amend the tenant petition, that her bankruptcy does not bar the claims she asserts here. Because I find the statute of limitations issue to be dispositive, I do not need to consider the bankruptcy question.

D. Tenant's Request To Vacate the Orders in TP 27,707

Tenant's request for OAH to vacate the RACD's Order of April 3, 2003, as amended by the Order of May 31, 2005, raises serious jurisdictional questions. The previous tenant petition, TP 27,707, is not before this Administrative Court; nor has it ever been before this Administrative Court. At the time the Orders were issued, OAH did not have jurisdiction over rental housing cases.[6] But, even if we accept that OAH can assume jurisdiction over the previous tenant petition by virtue of its present jurisdiction over contested rental housing cases, Tenant's procedural obstacles at this late date are insurmountable.

In support of her plea to vacate the RACD orders, Tenant cites cases from the Superior Court of the District of Columbia that were decided under Super. Ct. Civ. R. 41, *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 1251–52 (D.C. 2004); *Wagshal v. Rigler*, 711 A.2d 112, 113 (D.C. 1998); *Bulin v. Stein*, 668 A.2d 810, 812 (D.C. 1995), or Super. Ct. Civ. R. 60, *Mourning v. APOCA Standard Parking, Inc.*, 828 A.2d 165, 167 (D.C. 2003). Although Tenant has not cited either of these rules in her papers, it is clear that OAH Rule 2818, 1 DCMR 2818, the OAH counterpart of Super. Ct. Civ. R. 41, is not applicable here. OAH Rule 2818.1 and 2818.2 require that a motion to vacate an order of involuntary dismissal be filed within 14 days, before the order becomes final. The rule is inapplicable to an order granting a motion for voluntary dismissal entered nearly two years in the past.

[6] OAH assumed jurisdiction over cases previously heard and decided by the Rent Administrator on October 1, 2006. D.C. Official Code § 2-1831.03(b-1)(1).

The OAH counterpart to Super. Ct. Civ. R. 60 is OAH Rule 2833, 1 DCMR 2833, which is patterned on the Superior Court Rule, and is to be interpreted in a manner that is consistent with Rule 60.

OAH Rule 2833.2, 1 DCMR 2833.2, provides in its entirety as follows:

> On motion and upon such terms as are just, this administrative court may relieve a party or a party's legal representative from a final order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 2831; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the final order is void; (5) a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the final order. Relief under this Section may be granted only to the extent it could be granted under the standards of D.C. Superior Court Civil Rule 60.

OAH Rule 2833.3, 1 DCMR 2833.3, in turn restricts the time in which a motion for relief from a final order may be filed.

> A motion for relief under Section 2833.2 shall be made within a reasonable time, and in no event more than ninety (90) days after service of the final order, or in the case of a final order issued by an agency other than OAH for a subject matter now under the jurisdiction of OAH, not later than March 22, 2005. The filing of such a motion does not affect the finality of an order or suspend its operation.

This one year restriction is fatal to Tenant's attempt to revive her dismissed petition. Any motion for relief from a final order must be brought within 90 days of when the order is issued.[7] Tenant has waited too long.[8]

Even if Tenant's motion were not restricted to a 90-day period, it would not be appropriate to reinstate the previous tenant petition. "The trial court, in evaluating a 60(b) motion, must consider . . . whether the movant (1) had actual notice of the proceedings; (2) acted in good faith; (3) took prompt action; and (4) presented an adequate defense. Prejudice to the non-moving party is also relevant." *Reid v. District of Columbia*, 634 A.2d 423, 424 (D.C. 1993) (quoting *Starling v. Jephunneh Lawrence & Assoc.*, 495 A.2d 1157, 1159-60 (D.C. 1985).

Here it is obvious that Tenant had actual notice of the proceedings but did not take prompt action, two factors that weigh against reopening a matter long closed. In addition, the likelihood of prejudice to Housing Provider relating to matters that are more than six years old is considerable. Witnesses may no longer be available and, if available, their memories may have grown dim. For purposes of Housing Provider's motion for summary judgment, I must assume

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[7] Because the final order here was issued by an agency that was not "now under the jurisdiction of OAH" on March 5, 2004, when the Rule was adopted, I assume, for purposes of the analysis here, that the March 22, 2005, limitation does not apply to rental housing cases. *See* 51 D.C. Reg. 2415, 2438 (Mar. 5, 2004). OAH did not assume jurisdiction of rental housing cases until October 1, 2006. *See* n. 6 *supra*.

[8] The grounds for seeking relief under the OAH rule are virtually identical to those under Super. Ct. Civ. R. 60(b). The Superior Court rule contains the more liberal restriction that: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken." Even if the OAH rules did not impose a 90 day restriction, Tenant's motion would be barred because relief under the OAH rule "may be granted only to the extent it could be granted under the standards of D.C. Superior Court Civil Rule 60." *See Frausto v. U.S. Dep't of Commerce*, 926 A.2d 151, 154 (D.C. 2007) (holding that the OAH rule "explicitly adopts the standards applicable to motions under Super. Court. Civ. R. 60").

that Tenant can demonstrate good cause why a motion to vacate the RACD orders should have been granted if it had been asserted in timely fashion. But Tenant has not adduced any material facts to satisfy the more stringent showing required to obtain relief from a final order.

A key consideration in this analysis is that Tenant did not take prompt action to protect her rights when the May 31, 2005, Order was issued. The Order attached clear instructions as to Tenant's "Right to File Exceptions to Proposed Order," and "Right to File Appeal." If Tenant had taken exception to the dismissal of the case the RACD might have vacated the dismissal and set the case for hearing. If Tenant had appealed, the Rental Housing Commission, which had previously reversed and remanded the case, might well have granted the same relief. The instructions attached to the Order were unambiguous. Moreover, Tenant was thoroughly familiar with the procedures, having previously prosecuted both a successful motion for reconsideration and a successful appeal.

Tenant's failure to take exception or to appeal was not the only respect in which she failed to prosecute her case diligently. If Tenant had re-filed her tenant petition in June of 2005, following the dismissal, her complaints would still have been timely. Instead, she waited nearly two years. By then the statute of limitations was insurmountable.[9]

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[9] Tenant asserts in an affidavit filed late in these proceedings that the supervisory hearing examiner told her that she had seven years in which to re-file her petition. Tenant Pet'r's Aff. in Support of Her Opp. to Housing Provider's Motion To Dismiss and Supp. Motion To Dismiss, ¶ 7. Even if Tenant's account is accurate, it makes no difference to the analysis here. Tenant does not allege any ambiguity in the instructions concerning the notices that were attached to May 31, 2005, Order, nor does she assert that the hearing examiner gave her any advice or interpretation concerning the motion for reconsideration or an appeal. *Compare Zollicoffer v. D.C. Public Schools,* 735 A.2d 944, 948 (D.C. 1999) (holding that ambiguity concerning a notice of time for appeal may toll the appeal deadline) *with Kamerow v. D.C. Rental Hous. Comm'n*, 891 A.2d 253, 257 (D.C. 2006) (quoting *Zollicoffer* for the proposition that "[t]he time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters" and upholding the Rental Housing Commission's dismissal of an appeal that was lodged on the final day for appeal 19 minutes after the RHC office closed).

E. Tenant's Appeal for Equitable Relief

Tenant contends that the Office of Administrative Hearings possesses "equitable powers" under the OAH Establishment Act, specifically D.C. Official Code § 2-1831.09 (b)(7), which empowers administrative law judges to "[c]ontrol the conduct of proceedings as deemed necessary or desirable for the sound administration of justice," § 2-1831.09 (b)(10), which empowers the judges to "[p]erform other necessary and appropriate acts in the performance of his or her duties and properly exercise any other powers authorized by law," and § 2-1831.09 (b)(13), which empowers them to "[e]xercise any other lawful authority." Tenant's Answer at 15.

None of the provisions that Tenant cites, nor any other provision of the OAH Establishment Act, confers equity jurisdiction on the administrative law judges. The omission is not inadvertent, for it is well-established that administrative law judges are not authorized to exercise equity jurisdiction. As the District of Columbia Court of Appeals bluntly noted: "Administrative agencies do not have inherent equitable power." *Prince Constr. Co. v. D.C. Contract Appeals Bd.*, 892 A.2d 380, 384 (D.C. 2006) (citing *Ramos v. D.C. Dep't of Consumer & Regulatory Affairs*, 601 A.2d 1069, 1073 (D.C. 1992).

Furthermore, even if this Administrative Court did possess equity powers, it is doubtful that the proper exercise of those powers would give Tenant the relief she seeks. The four part analysis set forth in *Reid v. District of Columbia, supra,* 634 A.2d 423w, is essentially an equitable balancing test. Just as Tenant's delay militates against reopening this case under OAH Rule 2833, if it were otherwise permissible, the delay would militate against fashioning an equitable remedy to enable Tenant to avoid the consequences of her failure to seek reconsideration or appeal of the May 31, 2005, Order, or to re-file her tenant petition promptly.

IV. Conclusion

Tenant seeks to revive the complaints of a tenant petition that was dismissed nearly two years before her current tenant petition was filed. Assuming, as I must for purposes of summary judgment, that Tenant's allegations are true, there is still no way that she can obtain relief at this late date. The acts that Tenant complains of occurred more than four years before the tenant petition here was filed. Her claims are therefore barred by the Rental Housing Act's three-year statute of limitations, D.C. Official Code § 42-3502.06(e). Tenant cannot, at this time, revive those dead claims by seeking to vacate the order that dismissed her previous petition and granted her the relief she sought in her own motion.

V. Order

For the foregoing reasons, it is this **25th** day of **June 2008,**

ORDERED, that Tenant's Motion To Amend RH TP 27,707 and RH TP 28,930 is **DENIED**; and it is further

ORDERED, that the Motion of Respondent To Dismiss is **GRANTED**; and it is further

ORDERED, that TP 28,930 is **DISMISSED**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are set forth below.

/s/
Nicholas H. Cobbs
Administrative Law Judge